IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

JUDGMENT

S.B.Civil Writ Petition No.1015/1996

Bhajan Lal.
vs.
State of Rajasthan and others.

Date : 4.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.NS Acharya, for the petitioner.

Mr.V Bishnoi, for the respondents.
Mrs.RR Kanwar, GA, for State.

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BY THE COURT :

REPORTABLE

Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 13.9.1978 by which the Assistant Commissioner, Colonisation, Ghadsana, Tehsil Anoopgarh, after hearing the petitioner, ordered that since the land in question has been ordered to be allotted on permanent cultivation basis to respondent Patram, therefore, the possession of the land measuring 6 bighas 6 biswas

allotted to Karamchand may be taken back from said Karamchand and possession may be delivered to Patram. Said order was challenged by Karamchand by preferring Appeal No.856/78 before the Additional Commissioner cum Revenue Appellate Authority, Rajasthan Nahar Project, Bikaner in his lifetime. Appeal was dismissed by the said appellate authority vide order dated 12.1.1983. Karamchand preferred revision petition before the Board of Revenue to challenge the orders dated 13.9.1978 and 12.1.1983. The Board of Revenue dismissed the revision petition of said Karamchand vide order dated 13.4.1993. It appears that during pendency of the revision petition, Karamchand died and his legal representatives were taken on record, therefore, the present writ petition has been filed by one of legal representatives of deceased Karamchand to challenge the above mentioned orders including the order of the Board of Revenue dated 13.4.1993.

Brief facts of the case are that a piece of land measuring 18 bighas 8 biswas of Chak No.2DD Murabba No.162/62 was allotted to one Patram (now deceased) on temporary cultivation lease basis lastly in the year 1971-72. Said Patram applied for permanent allotment of the said land on the basis of his alleged right and on the basis of the priority as given by Sub-clause (b) of Sub-rule (1) of Rule 5 of the Rajasthan Colonisation

(Allotment of Government Land to Post 1955 Temporary Cultivation Lease Holders and other Landless persons in the Rajasthan Canal Project Area) Rules, 1971 (for short 'the Rules of 1971'). The allotting authority vide order which appears to have been passed in the year 1974 decided to allot 12 bighas 4 biswas of land to said Patram on permanent basis under the Rules of 1971 out of 18 bighas 8 biswas land on the ground that the land in question is irrigated land and, therefore, Patram could have been allotted 12 bighas 4 biswas land and not entitled to 18 bighas 8 biswas land. Said Patram challenged the order of the allotting authority before the Commissioner, Colonisation cum Revenue Appellate Authority, Rajasthan Nahar Project, Bikaner by preferring Appeal No.518/77. Before the appellate authority, said Patram submitted that the land in question is not irrigated land, therefore, he is entitled to allotment of whole of land measuring 18 bighas 8 biswas under the Rules of 1971. The appellate authority after taking note of the fact that Patram was temporary cultivation land holder for 18 bighas 8 biswas land and it was renewed upto samwat year 2030 and in view of the revenue record, a case is made out for holding fresh enquiry about the nature of the land and to find out whether the land in question is irrigated land or unirrigated land. If the land in question is unirrigated than the said petitioner was

entitled to allotment of entire 18 bighas 8 biswas land. After remand order dated 21.6.1977, the allotting authority held that the land in question is unirrigated land and, therefore, said Patram was entitled to entire 18 bighas 8 biswas land. That during the pendency of the appeal of Patram for getting the entire land allotted to him under the Rules of 1971, the land was allotted to Karamchand (ancestor of petitioner) vide order dated 30.9.1975.

In view of the order dated 17.5.1978, Patram submitted an application before the Assistant Commissioner, Rajasthan Canal Project, Ghadsana and prayed that part of land i.e. 6 bighas 6 biswas which has been handed over to Karamchand may be taken back by the State and may be delivered to Patram. Said application was allowed by Assistant Commissioner vide order dated 13.9.1978 after hearing both the parties and the Assistant Commissioner directed that the possession of land measuring 6 bighas 6 biswas of Chak No.2DD which was allotted to Karamchand under the Rules of 1971 during the pendency of the appeal preferred by Patram, may be handed over to Patram. Said order was upheld by the Revenue Appellate Authority and the Board of Revenue as stated above.

The controversy, therefore, cropped up whether Patram who was original temporary cultivation land

holder and who was found entitled to land measuring 18 bighas 8 biswas for allotment on permanent basis under the Rules of 1971, can get the possession of the land on the basis of allotment of land to him inspite of the fact that during the pendency of the proceedings for allotment of land to Patram, the land has been allotted to Karamchand vide order dated 30.9.1975. The Board of Revenue and two courts below held that Patram is entitled to possession of the land, hence, this writ petition by the petitioner, legal representative of Karamchand.

Learned counsel for the petitioner vehemently submitted that Karamchand was allotted land measuring 6 bighas 6 biswas when it was recorded as government land and this land was allotted under the Rules of 1971. So far as eligibility of Karamchand for getting the land allotted under the Rules of 1971, that is not under challenge. Not only this, the order of allotment made in favour of Karamchand dated 30.9.1975 is also not under challenge till now and the order dated 30.9.1975 has attained finality. In view of the above reason alone, the petitioner, successor of Karamchand, is entitled to protect his land by virtue of a lawful order in his favour.

Learned counsel for the petitioner further submitted that in identical facts and circumstances,

the matter came up before this Court in the case of Chanan Kaur (Smt.) vs. State of Rajasthan & Ors reported in 2006(1) RRT 406, when there were two allotment orders – one prior in time and another subsequent in time. In that fact situation, the Division Bench of this court, after considering the judgment of the Hon'ble Supreme Court in detail considered the rights of the temporary cultivation land holder and specifically held that the temporary cultivation land holders have only limited right to the term of lease and with the expiry of term of lease, they are required to surrender the land to the Government or to the person to whom the land is allotted by the State Government and the said temporary cultivator has no right to resist the taking over possession by the subsequent allottee.

Learned counsel for the petitioner also relied upon the Division Bench judgment of this Court in the case of M/s. Uma Trading Company Vs. State of Raj. & Ors. reported in 1998(1) RLR 289 wherein there was already an allotment order in favour of “R” but further allotment of shop was made to one “U” and a plea was taken that subsequent allotment of the shop to the other person tantamount to cancellation of earlier allotment order made in favour of “R” which was rejected by the Division Bench of this Court with the reasons that the allotment in favour of subsequent

allottee is in gross and flagrant violation of the principles of natural justice. In view of the above, according to learned counsel for the petitioner, firstly, the petitioner's ancestor Karamchand was allotted the land by the competent authority under the Rules of 1971 by following the procedure and on the date when the land was allotted to Karamchand, the land was available with the Government for allotment and secondly, the allotment of land in question to Karamchand is not under challenge and that order has attained finality. In view of the above reasons, subsequent order of allotment made in favour of Patram is also in flagrant violation of the principles of natural justice as held by the Division Bench in the case of M/s. Uma Trading Company.

It is also submitted that the petitioner has not obtained the possession of the land from Patram in pursuance of any order and that has been reversed. Had it been the position, Patram could have claimed for restoration of possession of the property. In the facts of this case, question of restoration like as in Section 144 CPC cannot arise and the application of Patram before the original authority seeking restitution of possession of land itself was not maintainable. It is submitted that merely obtaining an order in the proceedings filed by Patram in which Karamchand was not party, any order, if has been passed

in favour of Patram, is neither binding on Karamchand nor on his successors and cannot undo what has been done in favour of Karamchand which has been done by competent authority way back in the year 1975.

Learned counsel for the petitioner has drawn attention of this Court to the relevant provisions of the Rules of 1971. According to learned counsel for the petitioner, under the Rules of 1971, the priorities for allotment of land are given to the persons who are falling in various categories as prescribed under Rule 5 of the Rules of 1971. It is submitted that firstly Patram was not falling in the category of sub-clause (b) of Sub-rule (1) of Rule 5 because of the plain reason that it was admitted case of Patram that land was alloted to him in the year 1971-72 on lease under the rules known as Rajasthan Colonisation (Temporary Cultivation Leases) Conditions, 1955. Whereas sub-clause (b) gives priority to the cultivators who were post 55 allottees. The post 1955 temporary cultivation land holder has been defined in Sub-rule (xv) of Rule 2 of the Rules of 1971 which reads as under :-

> “(xv) 'Post 1955 temporary cultivation land holder' means a landless person residing in the colony area since before the 1st day of April, 1955 to whom temporary cultivation of Government land was sanctioned by a competent authority on or before 15th day of October, 1955, but not later

than the 31st day of December, 1960, and such lease has been renewed from time to time upto the year 1967 and who has been holding continuous such land since the date of commencement of such lease."

According to learned counsel for the petitioner, this question goes to the root of the matter and if the question goes to the root of the matter, then that can be raised before the High Court in writ jurisdiction on the basis of admitted or proved facts. It is admitted case of Patram that he was allottee of the year 1971-72 only and, therefore, from his own admission, it is proved that he was not post 55 temporary cultivation land holder as defined in sub-rule (xv) of Rule 2 of the Rules of 1971 and, therefore, was not entitled to any priority under sub-clause (b) of Sub-Rule 1 of Rule 5 of the Rules of 1971. Further it is required that his lease should have been renewed upto the year 1967. Patram is not such allottee.

Otherwise also, according to learned counsel for the petitioner, a bare perusal of Sub-rule (6) of Rule 11 of the Rules of 1971 makes it clear that a person who has priority under Rule 5 has right to get the land but that right is not absolute right and that right is only when the land is available. Further, the applicant cannot claim any particular land. A priority may be

fixed according to the category among the persons mentioned in Sub-Rule (1) of Rule 5 but can get the same land “as far as possible” but not always the same.

Learned counsel for the respondents before submitting on merits raised preliminary objection about the maintainability of the writ petition on the ground that the order passed by the Board of Revenue on 13.4.1993 has been challenged by the petitioner after about 3 years and, therefore, only on the ground alone, the writ petition deserves to be dismissed.

Learned counsel for the respondents further submitted that though the allotment order was passed in favour of petitioner's ancestor Karamchand on 30.9.1975 but he deposited the balance amount of allotment in the year 1995 i.e. after decision of the Board of Revenue.

Learned counsel for the respondents also pointed out that before filing of writ petition, mutation has already been opened in the name of Patram and possession of the part of land has already been delivered to the respondent vide Annex.R/2. In this situation, this Court may not interfere in the writ jurisdiction when substantial justice has been done by ordering allotment of other land to Karamchand consequently to his successors.

Learned counsel for the respondents submitted that the petitioner applied for allotment of land on

permanent basis under the Rules of 1971. The petitioner's eligibility about allotment of the land under the Rules of 1971 that too on the basis of the right accrued to him because of his temporary cultivation lease granted by the State cannot be questioned and nobody has questioned till today and this allotment is sought to be challenged by the petitioner in this writ petition by raising arguments after more than about 29 years. That plea cannot be allowed to be raised by the petitioner. Otherwise also, the plea cannot be raised because of the reason that for the first time, the question of fact has been raised by the petitioner about the eligibility of Patram for getting the land allotted under the Rules of 1971. It is submitted that Patram's allotment order which attained finality presupposes that the authorities concerned have looked into the provisions of law and found him eligible for allotment of land under the Ruls of 1971. It is also submitted that the petitioner's own argument that since his allotment of land order has not been challenged, therefore, the petitioner's eligibility to keep the land cannot be questioned also applies to Patram's land allotment order.

Learned counsel for the respondents further submitted that the petitioner was allotted land measuring 18 bighas 8 biswas in Chak NO.2DD Murabba

No.162/62 and the Rule for allotment of the land particularly referred by the petitioner i.e. Sub-Rule 6 of Rule 11 itself makes it clear that in allotting the land to post 55 cultivation lease holder, they were entitled to the same land which was in their possession as allottees prior to permanent allotment of land. Further, if other land is to be allotted, then the land adjacent to the applicant is required to be given to the applicant under the Rules of 1971. In that situation, the petitioner was holding land measuring 18 bighas 8 biswas, he was found entitled to land measuring 18 bighas 8 biswas of particular land and he was allotted land measuring 12 bighas 16 biswas under the Rules of 1971, therefore, he is entitled to possess the land measuring 18 bighas 8 biswas and even if the land has been allotted to any other person, then Patram was entitled to 6 bighas 6 biswas land in the light of the provisions contained in Sub-Rule (6) of Rule 11.

I considered the submission of learned counsel for the parties and perused the documents as well as the facts of the case.

So far as the entitlement of land to the extent of 18 bighas 8 biswas of Patram under the Rules of 1971 is concerned, that cannot be questioned in writ petition which has been filed to challenge an order passed in

another ancillary proceeding initiated by Patram, is, if not a proceeding for restitution of the property, than a proceeding like execution, for getting possession of land from a party who is claiming his independent right or title in the land. The petitioner cannot be permitted to raise a ground that said Patram was not a lease holder falling in sub-clause (b) of sub-rule (1) of Rule 5 of the Rules of 1971 and he was not post 55 temporary cultivation land holder as defined in sub-rule (xv) of Rule 2 of the Rules of 1971. In view of the order passed in favour of Patram, a presumption can be drawn that Patram was a post 55 temporary cultivation land holder as defined in Rule 2 (xv).

Further contention of the petitioner is that as per Rule 2(xv) referred above, the person in cultivatory possession on the basis of any lease granted under the Rules of 1955 (supra), he should not only be a lessee in possession under the Rules of 1955 but he should also be in possession of said land. And then also, he can only claim priority in allotment of land but cannot claim allotment of particular land which at the time of allotment is not available for allotment with the Government. For that also, the fact remains that in the order of the Revenue Appellate Authority also, there is a fact mentioned that his

lease continued upto samwat year 2030 i.e., it was continuing in the calender year about 1972-73. Not only original land allotting authority found deceased Patram eligible person for allotment of land on permanent basis under the Rules of 1971 but the appellate authority also found him eligible person. It appears that there was no doubt about said Patram's eligibility and, therefore, the detail facts about his temporary lease are not mentioned in detail in the order by which he was found eligible for allotment of land in question. The petitioner cannot blow hot and cold. According to the petitioner, since his land allotment order dated 30.9.1975 has not been challenged and not been set aside, therefore, the petitioner's entitlement to land in question cannot be questioned but when Patram's land allotment order, which also has not been challenged by the petitioner is sought to be used against the petitioner, then the petitioner's contention is that that order is illegal and cannot be used for evicting the petitioner. In fact, in this writ petition, neither the petitioner's predecessor's nor respondent's predecessor's allotment of land for permanent cultivation can be challenged.

So far as the contention of the petitioner that said Patram himself admitted that he was lessee of the year 1971-72 is concerned, for that contention of learned counsel for the petitioner himself is very

relevant. According to learned counsel for the petitioner himself, temporary lease is granted for one year only and it expires with the expiry of the year and it requires either to be renewed or the lease can be fresh lease under the Rules of 1955. With the expiry of the lease, the lessee is bound to surrender the land to the Government. In that situation, if Patram submitted that he is temporary cultivation land holder in 1971-72, then that is also a fact pleaded is in consonance with the fact that every year, lease is renewed or fresh lease is required to be granted than Patram could have stated the fact relevant to the period in which he sought permanent allotment of the land. The continuity of the lease when was not challenged by anybody, there was no occasion for any authority to examine this aspect of the matter and the authority itself must have followed the Rules of 1971 and must have reached to the conclusion that Patram was post 55 temporary cultivation land holder under the light of the definition given in the Rules of 1971.

In view of the above, it is held that the petitioner in this writ petition legally cannot challenge the order of allotment of land of deceased Patram because firstly new question of fact about eligibility of Patram is sought to be raised in a proceeding not arising out of proceeding in which the

said order could have been challenged and further if any order is passed in favour of the petitioner, than there will be two contradictory orders, one in favour of deceased Patram by which he was allotted 12 bighas 8 biswas land and another holding him not eligible.

Before proceeding further, it will be appropriate to examine whether the principle of lis-pendens applies in the facts of the case and in case, the law of lis-pendens as such is not applicable, whether the principle of lis-pendens can be invoked ? This is because of the reason of above finding that the petitioner in this petition cannot challenge the order of allotment of land to Patram dated 17.5.1978 and during the pendency of lis (appeal) for allotment of land to Patram, land was allotted to the petitioner's predecessor Karamchand on 30.9.1975.

Learned counsel Mr.Bishnoi for the respondent in this respect relied upon the decision of the Hon'ble Supreme Court delivered in the case of Kedarnath Lal (dead) by his legal representatives and another vs. Sheonarain and others reported in AIR 1970 SC 1717 wherein the Hon'ble Supreme Court held that in the case of Court sales, the principle of lis pendens as such is not applicable as it is not applicable to involuntary alienations such as Court sales but still the Hon'ble

Supreme Court held that the principle of lis pendens applies to such alienations. The Hon'ble Supreme Court followed its earlier decision delivered in the case of Samarendra Nath Sinha vs. Krishna Kumar Nag reported in AIR 1967 SC 1440.

In another judgment relied upon by learned counsel for the respondent delivered in the case of Jayaram Mudaliar vs. Ayyaswami and others reported in AIR 1973 SC 569, the Hon'ble Supreme Court held that “a private transfer of the property in suit by a defendant during the pendency of a suit for partition of joint Hindu family properties is affected by the rule of lis pendens in Section 52. Though Section 52 does not in terms apply to Court auctions and revenue sales, the principle of lis pendens applies to such sales. But the effect of the application of the principle may vary according to the nature of the provisions under which the revenue sale is held. The principle of lis pendens does not affect pre-existing rights. If there is a valid charge or mortgage on a property, this does not vanish because the property becomes the subject-matter of a partition suit.” In this case, the Hon'ble Supreme court relied upon its earlier judgments delivered in the cases of Kedarnath Lal (supra) and Samarendra Nath Sinha (supra). (emphasis supplied)

In another judgment relied upon by learned counsel for the respondent delivered in the case of Om Prakash

Gupta vs. Ranbir B. Goyal reported in (2002) 2 SCC 256, the Hon'ble Supreme Court held that the principles flowing from provisions of Transfer of Property Act may be taken as a guide for understanding the inter se rights and obligations of parties under the general law.

Learned counsel for the respondent also relied upon the judgment of this Court delivered in the case of Bhai Ishar Das vs. Smt. Govindi and others reported in AIR 1975 RAJASTHAN 45, wherein this Court following the judgment of the Hon'ble Supreme Court delivered in the cases of Samarendra Nath Sinha (supra) and Jayaram Mudaliar (supra), held that the doctrine of lis pendens applies to involuntary alienations like Court sales.

Learned counsel for the petitioner firstly submitted that in the facts of this case, the principle of lis pendens cannot be applied as statutorily or by implication. Further, learned counsel for the petitioner submitted that deceased Patram had not acquired any right, title or interest in the property which was allotted to the petitioner and on the date, when the land was allotted to the petitioner, it was government land and there was no restraint order of any Court against the State Government to exercise power under the relevant provisions of law of allotment of land. Then the principle of lis pendens cannot be

stressed to that extent so as to deny the State from exercising its statutory powers. The Division Bench of this Court in the case of Chanan Kaur (Smt.) vs. State of Rajasthan & Ors. reported in RRT 2006(1) 406 clearly held that after expiry of period of temporary cultivation, lease status of lease holder is no more than a trespasser and the land is available for allotment. In this case, the petitioner was temporary cultivation lease holder and he applied for permanent allotment only. Till permanent allotment is made in favour of any person, he cannot claim any right, title or interest in the property more than as of temporary cultivation lease holder who may have priority in case when the land is given by the Government on permanent lease basis. Case of Bhai Ishar Das (supra) fully applies to the facts of the present case.

Learned counsel for the petitioner further submitted that in the case of Bhanwara Ram & Anr. vs. State & Ors. reported in 2006-07 (Supp.) RRT 540, this Court clearly held that when certain transfers have been made in accordance with law and in fact situation existing on the date of allotment were made, then those transfers are not hit by doctrine of lis pendens. In view of the above reasons, learned counsel for the petitioner submitted that neither the principle of lis pendens can be applied in the facts of this case nor this principle can be invoked.

I considered the above submissions of learned counsel for the parties and perused the judgments relied upon by them.

In view of the recent judgment of this Court in the case of Bhanwara Ram (supra) and in view of the distinguishing facts as compared to other alienations that it is an alienation by the State Government by exercising its statutory power and on the day when the land was allotted to the respondent, the land, in view of the Division Bench judgment of this Court in the case of Chanan Kaur (supra), was available for allotment with the State Government, the principle of lis pendens as such, which is not applicable, cannot be applied by implication as it will be putting restriction upon the State's right under Statute and particularly when the State is not under any legal disability because of any restraint order passed by any Court.

In the background of the above legal position, if the facts are recapitulated again, then the position becomes clear that the respondent's predecessor Patram was only a temporary cultivation lease holder at relevant point of time and applied for permanent allotment of land. The petitioner's predecessor was also entitled to allotment of land on priority basis.

He was allotted part of the same land for which deceased Patram was also applicant. Patram's appeal against the order of refusal of allotment of part of the land was pending. The matter was remanded by the appellate authority to the lower authority for consideration of the claim of deceased Patram. Before land could have been allotted to Patram, the land was allotted to Karamchand, the predecessor of the petitioner. Patram's allotment order was not challenged by Karamchand or his successors on any of the grounds including the ground that Patram had better claim than Karamchand or the land could not have been allotted to Karamchand by the State during pendency of the Patram's claim. Rule 5 of the Rules of 1971 gives priorities to the eligible persons and the priorities are not indefeasible right and the fact situation may require moulding of relief. In this case, as stated above, there was no bar against the State's right to allot the land when it was allotted to Karamchand and the principle of lis pendens has no application and in the facts of the case, cannot be invoked, then the only conclusion can be that the order of allotment of land to Karamchand deserves to be given precedence over the claim of Patram or his descendants.

There is one more contention of learned counsel for the petitioner that under the Rules of 1971,

priorities have been given to certain persons in the matter of allotment of land. That priority is not indefeasible right for getting the same land and no one can claim as a matter of right the allotment of land which he was cultivating. The contention of the petitioner is because of the reason that the respondent's predecessor who obtained the allotment of land on permanent lease hold basis in the proceedings for allotment of land subsequent to allotment of land to the petitioner's predecessor.

The argument advanced by learned counsel for the petitioner, as such, cannot be accepted. Once a person is found eligible for allotment of land on permanent basis because of his priority determined in accordance with law which is temporary cultivation lease holder's right, then till he is in possession of the land, then the same land is required to be alloted to the person. The priorities fixed by law on fulfilling conditions becomes right of the applicant on his showing eligibility in the priority list. That right cannot be denied arbitrarily by even State authorities when the State authorities once decide to go for allotment of land to the persons eligible. Once the person is found eligible, the State cannot deny the allotment of land arbitrarily or in violation to the priorities fixed by the Rules of 1971. It is different story when during process of allotment, the land

becomes unavailable for allotment. That may happen because of very many reasons, then in that situation, the applicant can be given another land in place of the land which he was cultivating. The possession may be important factor in such matters because of the reason that there cannot be any justification for declaring a person eligible for allotment of the land on the basis of his temporary lease hold cultivation right granted by the State and thereafter, ousting him from the land which he developed as temporary cultivation lease holder and allot another land which normally may be undeveloped land. However, in the present case, on facts, the respondent cannot get any benefit even in view of the above legal position as admittedly, the respondent is not in possession of whole of subsequently allotted land and the petitioner and his predecessor are in possession of the land as one piece of their allotted land in pursuance of their land allotment order.

Further, there is force in the submission of learned counsel for the petitioner that no order of eviction could have been passed against the petitioners' ancestor Karamchand by any of the authority merely on the basis of the order obtained by Patram of allotment of land in his favour. The allotment of land to Patram may have given any right to

said Patram in the land then also he could have sought eviction of Karamchand or his successor by filing suit for their eviction. Patram straightaway could not have executed the order of allotment of land against another allotment of land made in favour of Karamchand. No proceedings for eviction were ever initiated against the petitioners' predecessor Karamchand by the respondents or their ancestor Patram in Court of law and there is no order of any competent court of eviction of Karamchand or the petitioner from the land in dispute, then by initiating collateral proceedings on the basis of allotment order in favour of the respondent's predecessor, the respondent cannot evict the petitioner. A person in possession with having some title in his favour can be evicted only in accordance with law and not merely on the basis of claim of the title to the property. The authorities below also had no jurisdiction to pass eviction order under any provision of law as well as could not have ignored the title of the petitioner and his ancestor Karamchand.

The writ petition which was admitted eleven years ago and when this court found merit in the petition, it cannot be dismissed on the ground of delay.

In view of the above reasons, this writ petition

is allowed and the impugned orders passed by the allotting authority dated 13.9.1978, by the Revenue Appellate Authority dated 12.1.1983 and by the Board of Revenue dated 13.4.1993 are set aside. The respondents are restrained from dispossessing the petitioner from the land in square no.162/62 of Chak No.2DD on the basis of allotment order passed in favour of deceased Patram. The State may give another land to the respondent in lieu of land allotted by order dated 17.5.1978 to respondent Patram's descendants.

No order as to costs.

(PRAKASH TATIA), J.

S.Phophaliya